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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/611,968	07/03/2003	Herve Burgaud	06028.0020-00	3634
22852	7590	02/07/2006	EXAMINER	
FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER LLP 901 NEW YORK AVENUE, NW WASHINGTON, DC 20001-4413			ELHILO, EISA B	
			ART UNIT	PAPER NUMBER
			1751	

DATE MAILED: 02/07/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary**Application No.**

10/611,968

Applicant(s)

BURGAUD ET AL.

Examiner

Eisa B. Elhilo

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 December 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-36 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6 and 9-36 is/are rejected.
- 7) ☒ Claim(s) 7 and 8 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1 This action is responsive to the amendment filed on December 19, 2005.

2 The rejection of claims 1, 6, 9 and 13-35 under 35 U.S.C. 102(e) as being anticipated by Hoeffkes et al. (US 2002/0059682 A1), is maintained for the reasons set forth in the previous office action mailed on July 18, 2005.

3 The rejection of claims 2-5, 10 and 36 under 35 U.S.C. 103(a) as being unpatentable over Hoeffkes et al. (US 2002/0059682 A1), is maintained for the reasons set forth in the previous office action mailed on July 18, 2005.

4 The rejection of claims 11-12 under 35 U.S.C. 103(a) as being unpatentable over Hoeffkes et al. (US 2002/0059682 A1) in view of Rudolf Benshein (US 3,634,013), is maintained for the reasons set forth in the previous office action mailed on July 18, 2005.

5 Claims 7 and 8 objected to for the reasons set forth in the previous office action mailed on July 18, 2005.

Response to Applicant's Arguments

6 Applicant's arguments filed 12/19/2005 have been fully considered but they are not persuasive.

With respect to the rejection of claims 1,6,9 and 13-15 under U.S.C. 102(e) as being anticipated by Hoeffkes et al. (US' 682 A1), Applicant argues that Hoeffkes does not teach or suggest aldehydes as dyeing agents, much less aldehyde precursors as dye precursors. Applicant also argues that the phenol-oxidizing enzymes described by Hoeffkes cannot function to convert ethanol into an aldehyde, because ethanol is not a phenolic compound and the instant claims

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recite that the at least one enzyme must be able to generate an aldehyde from the at least one aldehyde precursor.

The examiner respectfully disagrees with the above arguments because a claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” *Verdegeaal Bros. v. Union Oil Co. of California*, 824 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). ”When a claim covers several structures or compositions, either generically or as alternatives, the claim is deemed anticipated if any of the structures or compositions within the scope of the claims is known in the prior art.” *Brown v. 3M*, 265 F.3d 1349, 1351, 60 USPQ2d 1375, 1376 (Fed. Cir. 2001). In this case Hoeffkes et al. (US’ 682 A1) teaches a composition comprising alcohol oxidase (see page 7, paragraph, 0129), heteroaromatic hydrazone (see page 2, paragraph, 0018) and ethanol as an aldehyde precursor (see page 11, paragraph, 0211) as recited by applicant in claims 6 and 9 under primary alcohols and also recited by applicant in the specification, page 4, lines 3-4, (the aldehyde precursors can be primary alcohols chosen from primary aliphatic and aromatic alcohols, such as methanol, ethanol---). Therefore, based on the applicants’ definition of the aldehyde precursors, ethanol as a primary alcohol is considered an aldehyde precursor. Further. Hoeffkes et al. teaches that amino acids such as lysine may be used in combination with the precursors such as indoline or indole derivatives (see page 6, paragraph, 0126). Therefore, Hoeffkes et al. teaches all the limitations of the claims and accordingly the anticipation rejection is proper and maintained.

With respect to the rejection of claims 2-5, 10 and 26 under U.S.C. 103(a) as being unpatentable Hoeffkes et al. (US’ 682 A1), Applicant argues that Hoeffkes alone can not serve as

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proper basis for a prima facie case of obviousness because Hoeffkes fails to teach or suggest a dye composition comprising at least one aldehyde precursors.

The examiner respectfully disagrees to the above argument for the same reasons given above.

7 **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

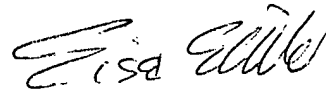
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eisa B. Elhilo whose telephone number is (571) 272-1315. The examiner can normally be reached on M - F (8:00 -5:30) with alternate Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yogendra Gupta can be reached on (571) 272-1316. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Eisa Elhilo
Primary Examiner
Art Unit 1751

February 2, 2006